FILED
NOV 23 1992
OFFICE OF THE CLERK

No. 92-519

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

LAWTON CHILES, Governor of the State of Florida, ROBERT A. BUTTERWORTH, Attorney General of the State of Florida, JIM SMITH, Secretary of State of the State of Florida, T. K. WETHERELL, Speaker of the Florida House of Representatives, and PETER R. WALLACE, Chairman of the Reapportionment Committee of the Florida House of Representatives,

Appellants,

v.

MIGUEL DE GRANDY, MARIO DIAZ-BALART, ANDY IRELAND, CASIMER SMERICKI, VAN B. POOLE, TERRY KETCHEL, ROBERTO CASAS, RODOLFO GARCIA, JR., LUIS ROJAS, LINCOLN DIAZ-BALART, JAVIER SOUTO, JUSTO LUIS POZO, ALBERTO CARDENAS, REY VELAZQUEZ, LUIS MORSE, ALBERTO GUTMAN, KAREN E. BUTLER, SGT. AUGUSTA CARTER, JEAN VAN METER, ANNA M. PINELLAS, ROBERT WOODY, GINA HAHN, BILL PETERSEN, TERRY KESTER, MARGIE KINCAID and BROOKS WHITE and the UNITED STATES OF AMERICA,

Appellees.

On Appeal from the United States District Court for the Northern District of Florida

---

BRIEF AMICI CURIAE OF FLORIDA STATE REPRESENTATIVES CYNTHIA CHESTNUT, DOUGLAS JAMERSON, ALFRED LAWSON, WILLIE LOGAN AND ALZO REDDICK IN SUPPORT OF APPELLANTS

REGINALD EDMOND MOORE *
559 2nd Avenue
Daytona Beach, FL 32115
(904) 258-0305

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Whether a state-enacted reapportionment plan violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, because it does not maximize the electoral opportunities of a class of minority plaintiffs, notwithstanding that the plan provides the minority class with the opportunity to elect representatives in numbers at least equal to the class's proportion of the population?

2. May a federal court impose a reapportionment plan as a remedy for a Voting Rights Act violation without affording the State any opportunity to devise an acceptable remedial plan, especially when the court-ordered plan unnecessarily trenches on fundamental state policy choices?

TABLE OF CONTENTS

	Page
INTEREST OF AMICI	2
INTRODUCTION	2
ARGUMENT	7
I. THE DISTRICT COURT'S FAILURE TO EVEN CONSIDER THE STATE POLICIES THAT WERE INCORPORATED INTO THE STATE'S LEGISLATIVE REDISTRICTING PLAN OR THE IMPACT OF THAT PLAN VIOLATES THE STANDARDS THAT THIS COURT HAS ESTABLISHED FOR ASSESSING VOTE DILUTION CHALLENGES	7
II. THE REMEDY IMPOSED BY THE DISTRICT COURT FURTHER ILLUSTRATES THE DISTRICT COURT'S MISPERCEPTION OF THE SCOPE OF ITS AUTHORITY IN A SECTION 2 CASE	12
CONCLUSION	14

TABLE OF AUTHORITIES

Cases Page

Davis v. Bandemer, 478 U.S. 109 (1986) 2, 9, 10
Gaffney v. Cummings, 412 U.S. 735 (1973) 2, 7, 10-11
Metropolis Theatre Co. v. City of Chicago, 28 U.S. 61 (1913) 9
Nash v. Blunt, 797 F. Supp. 1488 (W.D. Mo. 1992) 11
San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) 9
Thornburg v. Gingles, 478 U.S. 30 (1986) 7, 8
Turner v. Arkansas, 784 F. Supp. 553 (E.D. Ark. 1991), *aff'd*, 112 S. Ct. 2296 (1992) 14
United Jewish Organizations, Inc. v. Carey, 430 U.S. 144 (1977) 7
Upham v. Seamon, 456 U.S. 37 (1982) 6, 12
Whitcomb v. Chavis, 403 U.S. 124 (1971) 14
White v. Weiser, 412 U.S. 783 (1973) 6, 12
Williams v. Orange County, 783 F. Supp. 1348 (M.D. Fla. 1992) 9
Wise v. Lipscomb, 437 U.S. 535 (1978) 6, 12

Statutes

42 U.S.C. § 1973 ..... *passim*

Miscellaneous

Brief Amici Curiae on Behalf of Congressman Louis Stokes, *et al.*, *Voinovich v. Quilter*, S. Ct. No. 91-1618 (Sept. 11, 1992) 7
S. Rpt. No. 94-917, 97th Cong., 2d Sess. (1982), *reprinted in* 1982 U.S. Code and Admin. News 177 8

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

No. 92-519

LAWTON CHILES, Governor of the State of Florida, ROBERT A. BUTTERWORTH, Attorney General of the State of Florida, JIM SMITH, Secretary of State of the State of Florida, T. K. WETHERELL, Speaker of the Florida House of Representatives, and PETER R. WALLACE, Chairman of the Reapportionment Committee of the Florida House of Representatives,

Appellants,

v.

MIGUEL DE GRANDY, MARIO DIAZ-BALART, ANDY IRELAND, CASIMER SMERICKI, VAN B. POOLE, TERRY KETCHEL, ROBERTO CASAS, RODOLFO GARCIA, JR., LUIS ROJAS, LINCOLN DIAZ-BALART, JAVIER SOUTO, JUSTO LUIS POZO, ALBERTO CARDENAS, REY VELAZQUEZ, LUIS MORSE, ALBERTO GUTMAN, KAREN E. BUTLER, SGT. AUGUSTA CARTER, JEAN VAN METER, ANNA M. PINELLAS, ROBERT WOODY, GINA HAHN, BILL PETERSEN, TERRY KESTER, MARGIE KINCAID and BROOKS WHITE and the UNITED STATES OF AMERICA,

Appellees.

On Appeal from the United States District Court for the Northern District of Florida

---

BRIEF AMICI CURIAE OF FLORIDA STATE REPRESENTATIVES CYNTHIA CHESTNUT, DOUGLAS JAMERSON, ALFRED LAWSON, WILLIE LOGAN AND ALZO REDDICK IN SUPPORT OF APPELLANTS

INTEREST OF AMICI

Amici are African-American members of the Florida legislature and members of the Florida Caucus of Black State Legislators ("Black Caucus").[1] *Amici* have a unique stake in this case: they are among the class of intended beneficiaries of the protections of Section 2 of the Voting Rights Act, and, as legislators, they played a primary role in enacting the reapportionment plan that has been challenged in this litigation as violative of Section 2. In this dual role, *Amici* championed, during the reapportionment process itself, the equal electoral opportunity principles upon which Section 2 is grounded. *Amici* consider the enacted plan to be an ideal embodiment of these Section 2 principles. However, the district court's judgment in this case threatens to circumvent this legislative process and to negate the gains made by the African-American communities in the Dade County area in the State's reapportionment plan.

INTRODUCTION

Redistricting is an inherently political process. The Court has been particularly sensitive to this inescapable reality: "Politics and political considerations are inseparable from districting and apportionment."[2] These "considerations" include a multitude of competing social, political, regional and ethnic interests. Such interests must often be balanced in the context of dramatic demographic changes that have virtually reshaped a State. At the same time, no political interest can ever be permitted to violate the voting rights of a State's citizens. A legislature's task, therefore, is to protect legal rights while, where appropriate, resolving political disputes that affect redistricting.

---

[1] The parties have consented to the participation of *Amici*; letters of consent are on file with the Clerk.

[2] *Davis v. Bandemer*, 478 U.S. 109, 128 (1986) (quoting *Gaffney v. Cummings*, 412 U.S. 735, 752-53 (1973)).

To fully appreciate how such interests were balanced in the Florida reapportionment plan, an initial understanding of the process which culminated in that plan, and the Black Caucus's role in that process, is essential. Historically, African-Americans had been effectively barred from participation in the political process in Florida.[3] However, the reapportionment plan at issue in this case was the product of an extremely open political process in which every affected interest and group was able to actively participate.

After the 1990 census, the Florida legislature established bi-partisan House and Senate committees to propose a plan for reapportionment of the state legislature. Before arriving at a final reapportionment proposal, the committees held 34 public hearings. Hispanic members of the Florida legislature, including Representative Miguel De Grandy, the principal private plaintiff in this case, served on these committees and played an active role in the hearing process.[4] These Hispanic representatives proposed redistricting plans in the legislature and these plans were the subject of extensive debate.[5] Community groups and other interested organizations participated actively as well.

Members of the Black Caucus also served on these committees and played a particularly active role throughout the redistricting process. They were assisted in the performance of their redistricting duties by African-American organizations from across the State, including the Florida chapter of the NAACP. In fact, the House

---

[3] App. 78a.

[4] Testimony of M. De Grandy, Tr. II, 138-139.

[5] *See* Testimony of W. Logan, Tr. VII, 79; Testimony of M. De Grandy, Tr. IV, 20-42. In fact, the remedial plan imposed by the district court was a modified version of a plan proposed by Hispanic representatives during the reapportionment process but ultimately rejected by the legislature during that process. D. Ct. Slip Op. at 67-73, App. 68a-72a.

redistricting plan initially proposed by the Black Caucus was the basis for the final Senate Joint Resolution 2-G ("SJR 2-G"). At trial, State Representative Willie Logan, the Chairman of the Black Caucus, testified that "96-98 percent of the configuration of the districts within the joint resolution were the ones that were proposed by the black caucus." Tr. VII, 75. Similarly, the SJR 2-G Dade County House districts were the districts of choice of the NAACP.[6]

The Black Caucus was particularly focused on the Dade County districts—the districts at issue in this case. Twelve separate Dade County African-American organizations worked with the Black Caucus to develop the Dade County districts eventually proposed by the Black Caucus.[7] Representative Logan testified at length about the intensely practical factors that were considered in formulating these proposed districts. For example, it was imperative that districts not cross the boundary between Dade County and Broward County. Representative Logan explained that Dade County is an essentially unified community that is completely distinct from Broward County.[8] Representing constituents in a district that included communities in both Dade and Broward counties would thus be much more difficult than representing constituents in a district wholly within just one county.[9] He also explained that a district straddling the boundary between the two counties would be in two different media markets (Miami and Fort Lauderdale), and that campaigning in such a district would be prohibitively expen-

[6] Testimony of W. Logan, Tr. VII, 108; Stipulated testimony of L. Russell, Tr. VII, 139, 140.

[7] Testimony of W. Logan, Tr. VII, 77, App. 201a.

[8] The Black Caucus also devoted a great deal of attention to the Broward County districts. In so doing, its members worked with a group of African-American organizations completely distinct from those involved in developing the Dade County districts. Testimony of W. Logan, Tr. VII, 89.

[9] Testimony of W. Logan, Tr. VII, 81.

sive.[10] For similar reasons, it also was important to try to conform to the greatest degree possible with the eight neighborhood areas served by the Miami Herald, the preeminent newspaper in Dade County.[11] The districts that were drawn also respected government units such as the areas established by the Florida Community Development Corporation "because those are established communities of interest that have worked together, and the boundaries are defined . . . by citizen data and based upon the income level and the distress in the area." Testimony of W. Logan, Tr. VII, 83.

The Black Caucus—and other members of the Legislature—also wanted to achieve a fair allocation of political power in the Dade County area. Representative Logan emphasized that: "we fe[lt] that we should come as close to proportionate representation as possible and that there should be opportunity provided not just for blacks and Hispanics but for all people to elect candidates of their choice." [12]

The members of the legislature took cognizance of all of these parameters—as well as of the reapportionment plan proposed by the Black Caucus—in its work to enact a viable redistricting plan.[13] Representative Logan explained that "[i]n this process, disagreement is part of

[10] Testimony of W. Logan, Tr. VII, 80-81. Moreover, preservation of the integrity of the boundary between Dade and Broward counties also was of critical importance to Anglo legislators from both counties. *See* Testimony of P. Wallace, Tr. VII, 165.

[11] Testimony of W. Logan, Tr. VII, 81.

[12] Testimony of W. Logan, Tr. VII, 109.

[13] Some members of the Hispanic delegation, including Representative De Grandy, did not accept the basic proportionality premise and refused to participate in the legislative negotiation process. Representative Logan "attempted to sit down with the Hispanic members and come to an agreement on the number of seats" but "[t]heir attitude [was] we want all or we want nothing." Tr. VII, 99.

democracy, we always have disagreements, but what we do learn is to respect each other's disagreements and learn to work with each other." [14] After lengthy legislative negotiations, the process successfully culminated in the enactment of a plan that enhances the opportunities of minority groups to elect candidates of choice by increasing the number of African-American House districts from six to eight overall and the number of Dade County Hispanic House districts from seven to nine.[15] The Black Caucus believes that this plan "fairly provides for the opportunity for . . . whites, Hispanics and blacks to have representation [and] respects when possible county boundaries and other points of interest in accomplishing that objective." [16]

The district court completely ignored this careful plan to protect equal rights and to balance political objectives and the ability of all impacted groups to participate in the balancing process when it concluded that SJR 2-G violates Section 2. Instead of examining the rich texture of the completed legislation, the district court concluded that the legislature had failed to draw every Hispanic district that could have been drawn. By so holding, the district court exceeded the requirements of Section 2 and impermissibly pre-empted "a legislative task" in direct contravention of this Court's express instructions. *See Upham v. Seamon*, 456 U.S. 37, 43 (1982) (per curiam); *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978); *White v. Weiser*, 412 U.S. 783, 794-95 (1973).

---

[14] Testimony of W. Logan, Tr. VII, 87.

[15] App. 111a-112a. In addition, SJR 2-G created seven African-American influence districts and five Hispanic influence districts across the State. *Id.*

[16] Testimony of W. Logan, Tr. VII, 113.

ARGUMENT

I. THE DISTRICT COURT'S FAILURE TO EVEN CONSIDER THE STATE POLICIES THAT WERE INCORPORATED INTO THE STATE'S LEGISLATIVE REDISTRICTING PLAN OR THE IMPACT OF THAT PLAN VIOLATES THE STANDARDS THAT THIS COURT HAS ESTABLISHED FOR ASSESSING VOTE DILUTION CHALLENGES.

In order to better serve legal and political interests, the Florida legislature sought to redistrict the State to achieve a fair allocation of political power. This Court has specifically endorsed such an approach: "judicial interest should be at its lowest ebb when a State purports fairly to allocate power . . . in accordance with . . . voting strength and, within quite tolerable limits, succeeds in doing so." *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973). *See also United Jewish Organizations, Inc. v. Carey*, 430 U.S. 144, 168 (1977).

The district court, however, made no effort even to address the fact that the redistricting plan afforded Hispanic voters proportional representation in the Dade County area. Instead, the district court simply assessed how many Hispanic districts could have been created in Dade County. The district court's imposition of such a maximization requirement in this case is clearly erroneous.

Nothing in the Voting Rights Act can be read to require maximization of the number of majority-minority districts. "Although there is significant dispute concerning what constitutes undiluted minority voting strength, 'there is substantial doubt that Congress intended undiluted minority voting strength to mean maximum feasible minority voting strength.'" Brief Amici Curiae On Behalf Of Congressman Louis Stokes, *et al.* at 21, *Voinovich v. Quilter*, S. Ct. No. 91-1618 (Sept. 11, 1992) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 94 (1986) (O'Connor, J. concurring)).

Instead, when a court addresses a Section 2 claim, "[t]he 'right' question . . . is whether '*as a result of the challenged practice or structure* plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.'" *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986) (quoting S. Rpt. No. 94-917, 97th Cong., 2d Sess. at 28 (1982), *reprinted in* 1982 U.S. Code & Admin. News 177) (emphasis added). To "answer this question, a court must assess the impact of *the contested structure or practice* on minority electoral opportunities." *Id.* (emphasis added).

In this case, however, the district court concluded that SJR 2-G violates Section 2 simply because "the plaintiffs have shown that more . . . districts may be drawn . . ." than were drawn. D. Ct. Slip Op. at 19 (quoting Tr. VIII-83), App. 24a. In so holding, the district court completely failed to examine the challenged plan itself and the State interests that were reflected in that plan. This exclusive focus on the treatment of one group in a redistricting plan without reference to the treatment of other groups and interests in that plan is improper because it does not permit an assessment of whether members of the protected class will have "less opportunity *than others* to participate in the electoral process and to elect representatives of their choice." 42 U.S.C. § 1973 (emphasis added).

Moreover, any inquiry to determine whether a reapportionment plan denies equal opportunity to a class of voters must include an assessment of the "totality of the circumstances," 42 U.S.C. § 1973(b), before a Section 2 violation can be decreed. A significant aspect of such an inquiry involves a determination of whether members of a minority group have been "hinder[ed] in their ability to participate effectively in the political process." *Gingles*, 478 U.S. at 45 (quoting S. Rpt. at 28-29).[17] Indeed,

[17] This Court has often stated that "it is important to remember that at every stage of [a system's] development, it has constituted a 'rough accommodation' of interests in an effort to arrive at practical and workable solutions." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 55 (1973) (quoting *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69-70 (1913)).

several of the express factors identified in the Senate Report accompanying the 1982 amendments to Section 2 as relevant in the "totality of the circumstances" assessment specifically focus on the ability of members of minority groups to participate effectively in the political process.[18] But the district court did not even consider the open process that resulted in SJR 2-G—a plan proposed and endorsed by the Black Caucus in a process in which Hispanic representatives actively participated.[19]

Another significant component of such an inquiry must include an evaluation of "the state interests . . . served by the particular districts as they were created by the legislature." *Davis v. Bandemer*, 478 U.S. 109, 142 (1986). But again the district court did not even attempt to conduct such an evaluation in this case. Thus, the court completely failed to assess the adequacy of the Dade County minority-majority districts that were created in SJR 2-G, the legal significance that the number

[18] These factors include "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;" the exclusion of members of the minority group from candidate slating processes; and "the extent to which the State or political subdivision has used . . . voting practices or procedures that may enhance the opportunity for discrimination against the minority group." *Id.* at 36.

[19] Any contention that SJR 2-G was employed as a purposeful device to further racial discrimination must be rejected for the same reason because the plan was "developed through an open and democratic process free from bias or prejudice and any intent to discriminate against the plaintiff class." *Williams v. Orange County*, 783 F. Supp. 1348, 1356 (M.D. Fla. 1992) (rejecting a similar 14th Amendment vote dilution claim).

of African-American and Hispanic districts was greatly enhanced in the plan and that nine Dade County Hispanic districts were created in SJR 2-G (a number precisely proportional to the Hispanic community's population in Dade County), and the other State policy choices that were reflected in SJR 2-G. *See* D. Ct. Slip Op. at 23-53, App. 28a-55a.

The court instead believed that the challenged plan and the process in which it was derived were irrelevant because—once political cohesion and racially polarized voting are shown—Section 2 requires nothing more than a demonstration that additional districts could have been, but were not, drawn. This standard effectively imposes a requirement of "maximization" and excludes the consideration of all other factors because any failure to draw additional minority districts that could be drawn will violate Section 2 so long as racially polarized voting exists. Utilization of such a benchmark "invit[es] attack on minor departures from some supposed norm" which this Court has steadfastly refused to permit because it "too much embroil[s] the judiciary in second-guessing what has consistently been referred to as a political task for the legislature, a task that should not be monitored too closely unless the express or tacit goal is to effect its removal from legislative halls." *Davis v. Bandemer*, 478 U.S. at 133. In *Gaffney v. Cummings*, this Court similarly derided such a mechanistic approach:

> An unrealistic overemphasis on raw population figures, a mere nose count in the districts, may submerge . . . other considerations and itself furnish a ready tool for ignoring factors that in day-to-day operation are important to an acceptable representation and apportionment arrangement.

Gaffney v. Cummings, 412 U.S. at 749.

Finally, while "[t]here is no doubt that there may be other reapportionment plans . . . that would have different political consequences and that would also be constitutional," *Gaffney v. Cummings*, 412 U.S. at 754, a district court's role is not to implement what it considers to be the best plan, but merely to determine whether the plan enacted by the State comports with Section 2 and constitutional requirements. By requiring maximization even when a plan does not violate these requirements, the district court has implemented its own policy priority. This it cannot do. "District lines are rarely neutral phenomena. . . . The reality is that redistricting inevitably has and is intended to have substantial political consequences." *Id.* at 753. And it is the States who must be permitted to "seek, through compromise or otherwise, to achieve the political or other ends of the State, its constituents, and its officeholders." *Id.* at 754.[20] The federal courts "themselves must [not] make the political decisions necessary to formulate a plan or accept those made by reapportionment plaintiffs who may have wholly different goals from those embodied in the official plan." *Id.* at 749. Yet that is exactly what the district court attempted to do in this case when it invoked the maximization standard without even assessing the impact of the challenged plan on affected minority groups or the State policy objectives embodied in that plan. In so doing, the court eliminated by judicial fiat many of the political choices that had been championed by the Black Caucus and incorporated into SJR 2-G. Because there was no legitimate basis on which to predicate a finding that SJR 2-G violated Section 2, the district court's liability determination should be reversed.

---

[20] By ultimately refusing to fairly consider compromise proposals during the legislative process which resulted in the enactment of SJR 2-G, the Hispanic delegation essentially opted out of this process in favor of a court based challenge. However, groups dissatisfied with the process of legislative accommodation should not be permitted to negate that process by refusing to participate and then running to court to complain about the result. *See, e.g., Nash v. Blunt*, 797 F. Supp. 1488, 1506 (W.D. Mo. 1992) (three-judge court) (Sachs, J., concurring).

II. THE REMEDY IMPOSED BY THE DISTRICT COURT FURTHER ILLUSTRATES THE DISTRICT COURT'S MISPERCEPTION OF THE SCOPE OF ITS AUTHORITY IN A SECTION 2 CASE.

A "district court's modifications of a state [redistricting] plan [must be] limited to those necessary to cure any constitutional or statutory defect." *Upham v. Seamon*, 456 U.S. 37, 43 (1982). A district court must therefore "defer to the legislative judgments the [original] plan[] reflect[s] to the maximum extent feasible." *Id.* at 40-41. *See also White v. Weiser*, 412 U.S. 783, 795 (1973). Such deference is mandated because "redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to preempt." *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978).

Yet, to create two additional Hispanic majority districts in Dade County, the modified De Grandy plan imposed by the district court substantially reconfigures all 31 House districts in South Florida. The remedial plan reaches far beyond Dade County, and reshapes districts in areas that were not at issue in this case and for which no evidence of a Section 2 violation was even submitted. In so doing, the remedial plan unnecessarily ignores the important traditional boundary between Dade and Broward counties whose preservation was of such critical importance to the Black Caucus. In SJR 2-G, only District 101 crosses the boundary between Dade and Broward counties. This district includes 105,140 persons in Broward County and only 2,260 persons in Dade County. In the court-ordered plan, three districts cross the boundary: District 101, 102 and 110. District 102 is an African-American district in the remedial plan but African-Americans are divided in that district with 59,794 residing in Dade County and 9,233 residing in Broward County. This is exactly what the Black Caucus sought to avoid.[21]

[21] *See* Text at 4-5, *supra*; Testimony of W. Logan, Tr. VII, 81.

The remedial plan also ignores other traditional political divisions that the legislature and the Black Caucus sought to preserve. It combines African-American communities in Broward and Dade counties that do not have traditional ties. Moreover, as discussed above, it is more expensive for candidates to run campaigns and effectively represent districts that have residents in both Dade and Broward counties. In addition to combining disparate communities, the court's remedial plan unnecessarily divides traditional African-American communities including Opa-locka, Richmond Heights and Carol City.

Finally, the remedial plan amounts to a partisan gerrymander that significantly changes the political balance in the State.[22] At bottom, it may be that one of the primary impetuses behind the plaintiffs' challenge was to achieve an alteration of the partisan political balance in the State of Florida that they were unable to achieve in the legislature. Hispanic voters in South Florida—especially voters with a Cuban heritage—traditionally align themselves with the Republican Party while African-American and Anglo voters in South Florida tend to identify themselves with the Democratic Party.[23] The remedial plan the Hispanic and Republican plaintiffs succeeded in having the district court impose implemented their political agenda—Republicans gained four seats in the court's remedial plan increasing the districts in which they comprised a voting majority from

[22] *See* Affidavit of K. Brace (filed July 2, 1992), App. 154a.

[23] *See* Testimony of M. De Grandy, Tr. IV, 42; Testimony of D. Moreno, Tr. II, 102. *See also 1982 State Legislative & Congressional Districts*, Fla. Hse. Comm. on Reapportionment, Sept. 1991 (the "Malapportionment Report") (entered into the district court record by the De Grandy plaintiffs in De Grandy Request For Judicial Notice, Item 8 (filed April 17, 1992) and Order entered April 22, 1992 (granting same)).

10 to 14.[24] But such an objective is not redressable in a Section 2 challenge—Section 2 protects the rights of members of racial or ethnic groups but not the rights of members of political parties. *See* 42 U.S.C. § 1973; *Whitcomb v. Chavis*, 403 U.S. 124, 152 (1971) (African-Americans who lose elections not because of their race but because of their political party affiliation are not entitled to Section 2 relief). *See also Turner v. Arkansas*, 784 F. Supp. 553, 563 (E.D. Ark. 1991) (three-judge court) (noting a similar phenomenon in an Arkansas reapportionment challenge), *aff'd*, 112 S. Ct. 2296 (1992).

Thus, the partisan remedial plan hastily imposed by the district court—a plan which unnecessarily redraws districts far beyond the area of the alleged Section 2 violation and which completely trenches upon the State policy objectives reflected in the original plan—should, at a minimum, be vacated.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in Appellants' Jurisdictional Statement, the Court should note probable jurisdiction of this appeal.

Respectfully submitted,

REGINALD EDMOND MOORE *
559 2nd Avenue
Daytona Beach, FL 32115
(904) 258-0305
* Counsel of Record

November, 1992

[24] Moreover, the district court's remedial plan places 19 incumbents into districts with other incumbents. Fourteen of these incumbents are Democrats. In one district in the remedial plan (District 101), three Democratic incumbents are paired in a strong Democratic district. In another district in the remedial plan (District 93), two Democratic incumbents are paired with one Republican incumbent in a strong Republican district. In all, the remedial plan could result in the defeat of at least seven and possibly as many as 11 Democratic incumbents. Affidavit of K. Brace (filed July 2, 1992), App. 154a.